

AUG 03 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

GENARO FRANCO-BAUTISTA;
ALMA DELIA PADILLA PEREZ,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-72477

Agency Nos. A77-110-804
A75-725-129

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Genaro Franco-Bautista and Alma Delia Padilla Perez, husband and wife
and natives and citizens of Mexico, petition for review of the Board of

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Immigration Appeals’ (“BIA”) order denying their motion to reopen removal proceedings. We dismiss the petition for review.

The evidence petitioners presented with their motion to reopen concerned the same basic hardship grounds as their application for cancellation of removal. *See Fernandez v. Gonzales*, 439 F.3d 592, 602-03 (9th Cir. 2006). We therefore lack jurisdiction to review the BIA’s determination that the evidence submitted with petitioners motion to reopen was insufficient to establish a prima facie case of hardship. *See id.* at 601 (holding that if “the BIA determines that a motion to reopen proceedings in which there has already been an unreviewable discretionary determination concerning a statutory prerequisite to relief does not make out a prima facie case for that relief,” 8 U.S.C. § 1252(a)(2)(B)(I) bars this court from revisiting the merits).

PETITION FOR REVIEW DISMISSED.